MEETING MINUTES
WATER POLLUTION CONTROL ADVISORY COUNCIL
Friday, November 8, 2013
10:00 AM – 12:00 PM
Metcalf Building, Room 111
1520 E. Sixth Ave, Helena, MT

PRESENT

Council Members Present:
Mitchell Leu
Stevie Neuman
Earl Salley
Karen Bucklin Sanchez
Trevor Selch
Keith Smith (by phone)
Michael Wendland
Kathleen Williams (by phone)

Council Members Absent:
Corey Fisher
Roger Muggli
Dude Tyler

Montana Department of Environmental Quality Staff Members:
Mark Bostrom
Kirsten Bowers
Bob Habeck
Steve Kilbreath
Sarah Norman
Amy Steinmetz
Michael Suplee
Eric Urban
Christine Weaver

Guests:
Laurie Crutcher
Emilie Erich
Mark Fitzwater
Tina Laidlaw
Kate Miller
Rick Mulder
Mark Schaffer (by phone)
Brian Sugden

CALL TO ORDER

Chairperson Trevor Selch called the meeting to order at 10:02 a.m.

APPROVAL OF AGENDA

There were no additions or edits to the November 8, 2013 agenda; the agenda was approved.

APPROVAL OF MINUTES

Mr. Early Salley moved to approve the April 19, 2013 meeting minutes as written; Mr. Michael Wendland seconded the motion. There was no opposition to the motion; the motion carried.

ACTION ITEMS

Next Meeting -

Ms. Amy Steinmetz announced that there would need to be a Water Pollution Control Advisory Council (WPCAC) meeting in December to allow review of the Numeric Nutrient Standards Rule Package material prior to the next Board of Environmental Review meeting, which will occur on January 21, 2014. The council decided that a teleconference on December 17 would be acceptable for the next meeting.

Numeric Standards Rule Package -

Mr. Mike Suplee gave an introduction to the Numeric Nutrient Standards Rule Package. He described the disparity between numbers that will protect beneficial uses and the model standards. Ideally these numbers would be in close alignment with the levels of treatment seen from wastewater treatment plants, but this is not the case. Consequently, standards have been set up so that, once adopted, they can be achieved over time.

Mr. Suplee then explained that Version 7.8 of the Nutrient Standards Rules and Statements of Reasonable Necessity is built on a version of the standards that are one iteration old, but there have been no substantive changes to the rules.

Next, Mr. Suplee turned to the handout titled Water Quality Subchapter 5, which are the mixing zone rules. There will be a new circular, DEQ-12, that will lay out the nutrient standards. Subchapter 5 incorporates DEQ-12 into the mixing zone rules. One item that Mr. Suplee specifically pointed out in Subchapter 5 is that for other types of parameters, mixing zones are sometimes calculated using a fraction of the 7Q10 flow. In this case, because of the nature of nutrients, the entire flow can be used to calculate the mixing zone. As Permitting is still looking over Subchapter 5, Mr. Suplee advised holding off on any decisions about the Subchapter 5 material at this time.

Ms. Karen Bucklin Sanchez asked for more description about the Subchapter 5 changes. Mr. Suplee said that they chose a flow that would allow for standards to be met on any given year. The 7Q10 that has been used up until now was based on the idea that there should not be an exceedance of a water quality standard more than once in three years. There were no statistically calculated flows from USGS for one in three years, but there was for one in five years, so they meshed this, making standards a little more protective.

In response to a second question by Ms. Bucklin Sanchez, Mr. Suplee explained that when someone cannot meet the standard, they would apply for a general variance. At that point, the general variance is calculated independently from the flows. On a monthly basis, they will probably be required to meet a number slightly more liberal than the one in ten. It is fully understood that the general variance will exceed the standards, but it is a temporary step in the movement toward the goal of meeting the standards.

Mr. Mitchell Leu asked why the standard would be lower than treatment technology is capable of achieving if granting a variance to exceed a standard does not cause any detriment. Mr. Suplee said that the variance will cause detriment locally in the stream and downstream. Instead of removing a use, the variance allows for gradual steps to work down to achieving the standards. Mr. Leu asked why not set a standard that is currently achievable and then work on lowering the standard as treatment technology improves. Applying for a variance takes effort and money. Mr. Suplee explained that the way the Montana Water Quality Act and the Federal Water Quality Act are set up, the water quality standards need to be established at levels that protect beneficial uses of the water that are already

adopted based on a scientific method. These scientifically based standards are then compared to existing water treatment technologies. Staff members of the Department of Environmental Quality (DEQ) believe that these standards are ultimately achievable. By presenting the criteria that science indicates as the required level of protection, the nutrient standard goal is readily available to everyone, eliminating the need to explain why regulations are being changed over time.

Ms. Bucklin Sanchez asked about nonpoint source strategies to address nutrient standards. Mr. Mark Bostrom responded to this by saying that over the course of the last few sessions, DEQ has built a toolbox of different means for nutrient reduction that helps incorporate nonpoint source reduction. These methods include wastewater reuse, a nutrient trading program, and a five-year nonpoint source management plan. Mr. Bostrom said that while nonpoint sources will need reductions to meet instream standards across the state, the Clean Water Act and Montana Water Quality Act are clear that nonpoint source pollution reduction is a voluntary measure. Mr. Suplee added that point source alone could do a lot to clean up phosphorus in the summer. In dealing with nitrogen, this is more complicated as it has diverse sources.

In response to a question by Ms. Kathleen Williams, Mr. Suplee said that 75-5-313, which is what the rules are being built underneath, specifies that if someone is granted a variance, DEQ must revisit the basis of that variance every three years.

Ms. Williams asked about options for innovative solutions and resources for Montana water quality. Ms. Kate Miller, from the Department of Commerce, said that they have planning grants available that allow studies to be an eligible expense. These would be considered on a case-by-case basis, and must maintain the overarching goal of protection of public health and safety. Ms. Williams brought up the topic of partnering with the Montana University System (MUS). In response, Mr. Paul LaVigne described an existing pilot program formed from a partnership between DEQ and MUS.

Mr. Keith Smith inquired why push a standard for everyone, rather than waiting for Total Maximum Daily Loads (TMDL) to characterize the sources of individual problems. Mr. Bostrom responded that the TMDL schedule is being driven by a lawsuit. All areas in the West that have watersheds impaired by nutrients will have a TMDL and those TMDLs will describe an equitable distribution of reductions necessary by both point and nonpoint sources. According to Mr. Bostrom, the science that Mr. Suplee has developed is currently being put into TMDLs. The importance of getting this Numeric Nutrient Standards Package through is that it has the accompanying variance procedure tied to it. The TMDL does not have that type of mechanism available to it. He said that the best case would be for DEQ-12 Parts A and B to advance together, which would assist TMDLs.

Mr. Smith expressed concerns about spending a significant amount of money to make a minor reduction in nitrogen and phosphorus levels resulting from point sources rather than addressing nonpoint sources. Mr. Suplee explained that there are no laws to regulate nonpoint source pollutants. He also said that in many cases during the summer, the point sources are a big piece of the phosphorus problems. Mr. Bostrom and Mr. Suplee both added an example of how the adoption of numeric nutrient standards has increased regulation of phosphorus in detergents, allowing for a significant reduction of phosphorus in wastewater in those areas.

Ms. Williams asked for a description of the public review process for the Numeric Nutrient Standards Rule Package. Mr. Suplee said that public review began in late 2008 with the predecessor group to the Nutrient Work Group. Then the Nutrient Work Group was created and it has been operating as the advisory group on this topic since 2009. The Nutrient Work Group will continue to meet over the next year to provide input. The goal is to take this to the board in December. This would initiate a public comment period, and it would be no sooner than six months before the rules were adopted.

Mr. Suplee mentioned that one outstanding issue that still needs to be addressed is the implementation of the nondegradation laws. Ms. Williams asked for a justification for moving forward with the Rule Package although it needs more work. Mr. Suplee explained that the Rule Package is

functional as it currently exists. Mr. Bostrom added that the nutrient standard packages in some other states, including Colorado and Florida, have moved forward with their criteria separate from the nondegradation laws.

Mr. Brian Sugden said he believes that a delay in moving this on to the board would be appropriate. He voiced concern that the numeric standards for Flathead Lake that are included in Circular DEQ-12 are based on 15-year-old science. Mr. Suplee responded by saying that, in the past year, there have been discussions with the Flathead Lake Biological Station on the standards for the lake. The scientists at the station feel that the total nitrogen and total phosphorus criteria are still relevant to meeting the goal of maintaining the lake's current A-1 water quality status.

Michael Wendland made a motion to send the Numeric Nutrient Standards Rule Package forward to the board with the exclusion of Subchapter 5; Kathleen Williams seconded the motion. Further discussion ensued. Ms. Bucklin Sanchez said that while engineers who have been involved with the Nutrient Work Group have generally supported moving forward with the Rule Package, those who have not been involved with the Nutrient Work Group have been opposed to it. That opposition has been based on three primary concerns: using a blanket approach to implement the Rule Package; lagoon variance dealing with ammonia standards; the nonpoint sources of nutrients and unintended consequences.

Mr. Leu asked why the Rule Package is being pushed forward if the Nutrient Work Group is not yet finished with it. Mr. Suplee answered that to go to the board next month, a review of, and support for, the Subchapter 5 changes must occur well before the end of December. Mr. Bostrom explained that 75-5-313 gives a date at which DEQ is required to have the variance established. The TMDL lawsuit that DEQ is operating under compels the department to use the science that exists. According to Mr. Bostrom, having numeric nutrient standards and the accompanying variance is key to a better path forward than using the TMDLs as the solution. The TMDLs do not have the authority that was granted by the legislature through the variance process in 75-5-313.

In response to a question by Ms. Williams, Mr. Suplee explained that the Nutrient Work Group is a standalone advisory council. If WPCAC makes a decision to move forward with the board rules, the Nutrient Work Group can continue to refine the other portion of the Rule Package, which includes implementation and variance.

There was no public comment on the motion.

Mitchell Leu, Karen Bucklin Sanchez, and Keith Smith opposed the motion to accept the Numeric Nutrient Standards Rule Package with the exclusion of Subchapter 5. All others voted in favor of the motion; the motion carried with a 5 to 3 vote.

BRIEFING ITEMS

Public Comment -

There were no public comments.

Agenda Items for Next Meeting –

Ms. Steinmetz said that the next meeting will include an agenda item on the extension of temporary standards for the New World Mine. Also, there should be a couple of new WPCAC members to introduce at the next meeting. Additionally, the 2014 WPCAC meeting calendar will be available for review. Ms. Steinmetz would also like to invite John North to discuss council responsibilities. Chairperson Selch asked how Ms. Steinmetz would like to handle the review of Subchapter 5. Ms. Steinmetz said that there would not need to be a vote. Instead WPCAC council members will be responsible for reviewing and commenting on the material. Comments can be provided either directly to Mr. Suplee or to Ms. Steinmetz, who will be responsible for getting these comments to Mr. Suplee. Mr. Suplee anticipates that Permitting will have Subchapter 5 comments ready by November 12. The

council determined that a vote on Subchapter 5 will be held if WPCAC council members deem it necessary after reviewing the changes. Additionally, Mr. Suplee will provide a summary of the main issues from today's Nutrient Workgroup meeting, and Ms. Steinmetz will provide a link to the meeting minutes.

ADJOURN

Chairperson Selch made a motion to adjourn the meeting. Mr. Salley moved to adjourn and Mr. Leu seconded the motion. All were in favor; the meeting adjourned at 11:53 a.m.

REFERENCED LINKS FOR MEETING MATERIALS
(Sites last updated 11/21/2013)

November 8, 2013 Agenda -
http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2013/Nov8/1_AGENDA11-8-13.pdf

Agenda Links:
Approved Minutes from April 19, 2013 –
http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2013/April19/4-19-13ApprovedMinutes.pdf

Numeric Nutrient Standards Rule Package –
http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2013/Nov8/2_NutrientAgendaMemo.pdf

Draft Nutrient Standards Rules and Statements of Reasonable Necessity –
http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2013/Nov8/3_Rules_v7 8StmntRN_WC (2).pdf

Draft Circular DEQ-12 –
http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2013/Nov8 /3_CircularDEQ12_v6.7_WC.pdf

Guide to Nutrient Documents –
http://deq.mt.gov/wqinfo/WPCAC/agendasMinutes/2013/Nov8/3_GuideToNutrntDocs.pdf

Submitted by,
Sarah Norman 11/21/2013